

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARK WILLIAMS, as Personal  
Representative of the Estate of Shane P.  
Williams, and MARK WILLIAMS, a married  
man as his separate property,

Plaintiff,

v.

KITSAP COUNTY, a municipal corporation;  
BEN HERRIN, husband and wife, and the  
marital community comprised thereof; and  
PAUL WOODRUM and JANE DOE  
WOODRUM, husband and wife, and marital  
community comprised thereof,

Defendants.

Case No. C08-05430-RBL

ORDER ON PLAINTIFF'S MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS AND FOR EXTENSION  
OF TIME TO COMPLETE DISCOVERY

THIS MATTER comes before the above-entitled Court upon plaintiff Mark Williams Motion to  
Compel Production of Documents and for Extension of Time to Complete Discovery. [Dkt. #59]  
Having considered the entirety of the records and file herein, the Court finds and rules as follows:

**I. INTERNAL INVESTIGATIONS OF AND COMPLAINTS ABOUT DEFENDANTS DEPUTY  
HERRIN AND DEPUTY WOODRUM**

Plaintiff seeks production of records for internal investigations and complaints involving Deputy  
Herrin and/or Woodrum [Dkt. #59]. Defendants argue that plaintiff has failed to identify the discovery  
requests upon which his motion to compel is based, and explain how records of non-use of force incidents

1 are relevant. [Dkt. # 62]

2 The Court agrees with the decision in *Soto v. City of Concord*, that a broader scope of discovery  
3 should be allowed when dealing with excessive force cases against police departments. 162 F.R.D. 603  
4 (N.D. Cal. 1995). It is “sufficient that plaintiff show how information of the *kind* that is likely to be in the  
5 files could lead to admissible evidence,” thus satisfying Fed. R. Civ. P. 26. *Id.* at 610 (citation omitted,  
6 emphasis in original). Internal investigations and complaints regarding the defendant deputies may reflect  
7 on their credibility, crime scene and evidence management, and other potentially relevant information.  
8 Plaintiff has also properly identified the discovery requests upon which his motion is based. [Dkt. #64]  
9 Plaintiff’s motion to compel this information is **GRANTED**.

## 11 **II. HIRING INFORMATION**

12 Plaintiff seeks production of the Deputies’ psychiatric information, medical information and  
13 polygraph tests that were utilized as part of the hiring process. [Dkt. #59] Defendants argue that the  
14 information is personal and protected, and is not reasonably calculated to the recovery of admissible  
15 evidence. [ Dkt. #62]

16 Mental health evaluations and polygraph tests used for the hiring process could lead to admissible  
17 evidence and are discoverable. A patient’s purpose in communicating with his therapist and his  
18 expectation of confidentiality may be a factors in determining whether a patient/psychotherapist privilege  
19 exists. *U.S. v. Romo*, 13 F.3d 1044, 1048 (9th Cir. 2005); Fed R. Evid. 504(b)(proposed). The plaintiff is  
20 not seeking communications used for treatment or diagnosis, and the defendant deputies knew that the  
21 evaluations would be reviewed by their superiors in the hiring process. The Court also finds that the  
22 results of the polygraph tests are discoverable. However, the physical health records do not seem relevant  
23 to the court at this time. Plaintiff’s motion to compel pre-hire polygraph test results and psychological or  
24 mental evaluations is **GRANTED**. Plaintiff’s motion to compel physical health records is **DENIED**.

## 26 **III. LETTER FROM DR. ROSENBAUM (p. 451)**

27 The Letter from Edward Rosenbaum Ph.D., dated May 19, 2006 have been provided to plaintiff on  
28 June 1, 2009. [Dkt. # 62] Thus, the plaintiff’s motion is **MOOT**. The court recognizes the defendant’s

1 continued objection to this disclosure, and any issues to its admissibility are preserved.

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3 **IV. COLOR COPIES OF PHOTOGRAPHS**

4 The color copies of photographs taken at the scene by KSCO Sgt. Clithero have been procured and  
5 provided to the plaintiff. [Dkt. #62] Thus, plaintiff's motion is **MOOT**.

6  
7 **V. EXTENSION OF TIME TO COMPLETE DISCOVERY**

8 Plaintiff has moved for an extension of time to complete discovery. The Court **GRANTS** this  
9 motion. The Court orders the defendant to produce the above documents by July 13, 2009. The discovery  
10 deadline is extended to July 27, 2009.

11  
12 **VI. ATTORNEY FEES**

13 Plaintiff seeks his attorney's fees related to the motion under Fed R. Civ. P. 37(a)(5). However,  
14 the defendants' objections were "substantially justified." Fed. R. Civ. P. 37(5)(A)(ii). Plaintiff's motion  
15 is **DENIED**.

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17 **IT IS SO ORDERED**

18  
19 Dated this 2<sup>nd</sup> day of July, 2009.

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22 **RONALD B. LEIGHTON**  
23 **UNITED STATES DISTRICT JUDGE**  
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